



SECRET 100-10

677107

SENSITIVE

May 16, 2012

MUR # 6578

**Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463**

Re: Complaint against Doug LaMalfa For Congress Campaign and Mark Spannagel and www.sam4congress.com

Ladies and Gentlemen:

Pursuant to 2 U.S.C. § 437g, and upon information and belief and the exhibits attached hereto, this complaint concerns violations of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq. ("FECA"), and Commission regulations at 11 C.F.R. § 1.1 et seq., by the Doug LaMalfa for Congress Campaign, Mark Spannagel (Chief of Staff to California State Senator Doug LaMalfa), and the internet web site located at www.senlamalfa.com (collectively hereinafter referred to as the "Respondents").

Specifically, based upon publicly available information found at www.sam4congress.com and documents received through subpoena from Wix.com, it has been confirmed that the Respondents have violated 2 U.S.C. §§ 441d, 441h and 11 C.F.R. § 110.11 for failure to include the proper independent expenditure disclaimers on the web site and falsely and attributing the web site to another candidate's pseudonymous supporters. In addition, if the Respondents expenditures associated with the web site aggregate in excess of \$250 for 2012, they must file the independent expenditure reports required by 2 U.S.C. § 434(c) and 11 C.F.R. §§ 104.4, 104.5, and 109.2. Finally and if the Respondents have received contributions or made expenditures whose aggregate value is in excess of \$1,000 during a calendar year, they have violated the registration requirements for political committees under FECA and Commission regulations. See 2 U.S.C. §§ 431, 433; 11 C.F.R. §§ 100.5, 102.1.

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I. STATEMENT OF THE FACTS

Mr. Spannagel is employed by Doug LaMalfa as his Chief of Staff for California Senator. Doug LaMalfa is a candidate for Congress representing the First District of California. Dr. Sam Aanestad and Michael Dacquisto are also candidates for Congress representing the First District of California.

The web site, www.sam4congress.com, is owned and operated by Mark Spannagel, aanestadnotforcongress@gmail.com, Penryn, California. Attached hereto as Exhibit A is a letter from counsel for Wix.com supporting such allegations.

A copy of the site indicates that it contains defamatory statements in connection with Dr. Sam Aanestad's profession by falsely publishing that Dr. Aanestad is not an oral surgeon and whose aim is to damage Dr. Aanestad in his effort to become the next Congressman from the First District of California in the upcoming election. The headline of the site is: "Sam Aanestad Not for Congress." Immediately below this statement is a clear picture of Dr. Aanestad. In addition, without any backup or documentation, this site falsely states, "Sam Aanestad is not an "Oral Surgeon..." Attached hereto as Exhibit B are screenshots of the subject website supporting such allegations.

Dr. Aanestad is an upstanding oral and maxillofacial surgeon. Dr. Aanestad earned his Bachelor of Arts degree from UCLA. In 1973, Dr. Aanestad earned his Doctor of Dental Surgery (DDS) degree from the UCLA. In 1979, Dr. Aanestad earned his Certificate in Oral and Maxillofacial Surgery from Highland Alameda Hospital in Oakland, California. Dr. Aanestad is a practicing dentist and oral and maxillofacial surgeon in Grass Valley, and served as the Vice-Chief of Surgery at Sierra Nevada Memorial Hospital in Grass Valley, California. Dr. Aanestad is now running for election for the open First Congressional District in California. The Respondents acted with actual malice in that they either knew that the statements were false or acted recklessly disregarding their falsity. The Respondents also falsely attributed the web site to "Free Thinkers for D'Acquisto" [sic]. Upon information and belief, the Respondents likely conspired with candidate Doug LaMalfa in publishing the pseudonymous web site.

The existence of the site clearly demonstrates that the Respondents expended or received funds to create and maintain this site. The costs associated with the site must include its fair value (which may have been set by the Respondents if they has attempted to sell the domain site) plus the fee to secure the registration of the domain name "www.sam4congress.com," the

cost of the computer hardware that houses the site and maintains its operations, the utility costs to create and maintain the site, including the computer software, and the costs to Wix.com in order to create the web site. Furthermore and if the Respondents did not create the site themselves, the labor or consulting costs for creating and maintaining the site must also be included.

If the value of the site and the costs involved in setting it up exceeds \$250, the Respondents must file the reports required of all independent expenditures. And if the value of the site and the costs of its establishment exceed \$1,000, then the Respondents must register with the Federal Election Commission ("the Commission") as a political committee and file the periodic reports required by FECA for all activity. If the message is somehow being disseminated by a corporate entity, then Respondents are also guilty of violating 2 U.S.C. § 441b. In particular, Mr. Spannagel (as an employee of candidate Doug LaMalfa), is also guilty of violating 2 U.S.C. § 441h in that he fraudulently misrepresented attribution to the web site as "Free Thinkers for D'Acquiso" [sic]. Michael Dacquist is also a candidate for Congress representing the First District of California and declares that he had no involvement in the creation of the www.sam4congress.com website. Attached hereto as Exhibit C is a declaration from Michael Dacquist supporting such allegations.

II. LEGAL ANALYSIS

A. The Respondents have violated FECA and Commission regulations by failing to include the required disclaimers on the web site.

FECA and Commission regulations require that all communications that expressly advocate the election or defeat of a clearly identified federal candidate must carry a disclaimer identifying the sponsor of the communication and whether it is coordinated with or independent of a candidate for federal office. See 11 C.F.R. § 110.11. The disclaimer requirements also apply to express advocacy communications located on a web site. See, e.g., FEC AO 1998-22 (concluding that an independent web site must satisfy the disclaimer requirements if it advocates the defeat of a clearly identified federal candidate). If a political communication located on a web site is an independent expenditure, then the disclaimer must comply with 11 C.F.R. § 110.11.

There is no question that the statement "Sam Aanestad Not for Congress" constitutes express advocacy under Buckley v. Valeo, 424 U.S. 1, 44 n.52 (1976), and Commission regulations at 11 C.F.R. § 100.22. Likewise, there is no question that the web site clearly identifies Dr. Aanestad. See 11 C.F.R. § 100.17 ("clearly identified" means the candidate's name, nickname, photograph ...").

Thus, the Respondents have violated FECA and Commission regulations by failing to include the required disclaimers on the web site. This violates FECA and Commission regulations and warrants a thorough investigation by the Commission.

B. If Respondents' expenditures associated with the web site exceed \$250 in 2012, they must meet the independent expenditure reports required by FECA and Commission regulations.

Commission regulations provide that any person who makes independent expenditures aggregating in excess of \$250 during a calendar year must file a signed statement or report with the Commission. See 11 C.F.R. § 109.2.

The fair market value of the site (which the Respondents may have established if they have attempted to sell the site) and the costs associated with its creation and maintenance constitute "expenditures" under FECA and Commission regulations, 2 U.S.C. § 431 and 11 C.F.R. § 100.8, because the site expressly advocates the defeat of a federal candidate by exhorting readers to not vote for Dr. Aanestad. See 11 C.F.R. § 100.22. Therefore, the costs associated with www.sam4congress.com constitute "expenditures" under FECA and Commission regulations.

In addition, the costs associated with the site appear to aggregate in excess of \$250 during 2012. The Commission has concluded that the overhead costs associated with the creation of a web site include "the fee to secure the registration of [the] domain name, the amounts ... invested in [the] hardware, and the utility costs to create the site." FEC AO 1998-22. Moreover, if the Respondents hired any consultants, or paid a third party to create the site, then those costs would count toward the \$250 threshold for filing independent expenditure reports. Upon information and belief, it is estimated that the costs of creating and maintaining a web site of this type can cost as much as \$2,000 or more.

Accordingly if Respondents have made expenditures aggregating in excess of \$250 during 2012, then they must file the semi-annual independent expenditure reports required by FECA and Commission regulations. See 11 C.F.R. §§ 109.2 & 104.5. Failure to file the required independent expenditure reports would constitute a violation of FECA and Commission regulations and would warrant a thorough investigation by the Commission.

C. If Respondents have received contributions or made expenditures in excess of \$1,000 during 2012, they have violated FECA and Commission regulations by failing to register as a political committee.

FECA and Commission regulations define a "political committee" as a committee, club, association or other group of persons which receives contributions or makes expenditures aggregating in excess of \$1,000 during a calendar year. See 2 U.S.C. § 431, 11 C.F.R. § 100.5. The costs associated with communications that advocate the election or defeat of a clearly identified federal candidate, such as www.sam4congress.com, constitute expenditures under FECA and Commission regulations. See 11 C.F.R. § 109.1. If a group of individuals satisfy the definition of a political committee, they are required to file a Statement of Organization within ten days of qualifying. See 11 C.F.R. § 102.1.

A review of the Commission's web site indicates that the Respondents have not filed a Statement of Organization with the Commission. If the costs associated with the web site exceed \$1,000 for 2012, then they are required to file a Statement of Organization. This failure constitutes a violation of FECA and requires further investigation by the Commission.

D. Respondents have falsely attributed the web site to a pseudonymous organization "Free Thinkers for D'Acquisto" [sic] and thus they have violated FECA and Commission regulations by fraudulently misrepresent themselves on a matter which is damaging to another candidate.

FECA states that no person who is a candidate for Federal office or an employee or agent of such a candidate shall "fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof" and that "willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to" fraudulently misrepresent himself is a violation of the Act. 2 U.S.C. § 441h.

The Respondents have fraudulently misrepresented that the web site was created by a pseudonymous organization called "Free Thinkers for D'Acquisto" [sic]. Mr. Dacquisto, as evidenced by the attached declaration, declares that neither he nor any organization known to him is responsible the website.

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Accordingly, Respondents have violated FECA by fraudulently misrepresenting themselves on a matter which is damaging to another candidate. See 2 U.S.C. § 441h. Fraudulently misrepresentation as to the attribution of the creator of the web site constitutes a violation of FECA and warrants a thorough investigation by the Commission.

III. CONCLUSION

Respondents' failure to comply with FECA and Commission regulations warrants further investigation and enforcement by the Commission. Therefore, the Commission should immediately investigate this matter and find reason to believe that Respondents have violated FECA and Commission regulations for the reasons set forth herein.

Respectfully submitted,

Sincerely,



Dr. Samuel M. Aanestad

Attachments

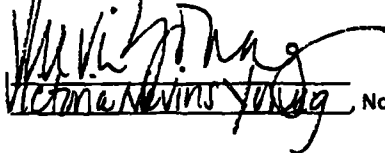
STATE OF CALIFORNIA)
) SS:
COUNTY OF NEVADA)

On May 17 2012, before me, V. Nevins Young a Notary Public, personally appeared Dr. Samuel M. Aanestad, who proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



Notary Public

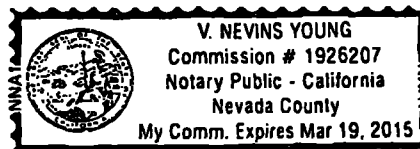


EXHIBIT B

1404426M001

Sam Aanestad

NOT for Congress

THE REAL SAM NEWS THE RECORD WHERE'S SAM ENDORSEMENTS

Unlike the real deal - the real Sam Aanestad has a long history of bad votes and out of touch elitism.

From opposing keeping hardened murderers and gang members behind bar for life to granting taxpayer financed financial aid to illegal immigrants, Sam Aanestad isn't the Principled Conservative he claims.

FYI - Sam Aanestad is not an "Oral Surgeon" or "Doctor" as he claims. He is ONLY licensed as a dentist, did not go to medical school and does not have an MD. How important is this? Not very - except as evidence of a long and deliberate habit of misleading to the voters of the district.

FREE THINKERS FOR D'ACQUISTO